

EXHIBIT E

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Lead Case No. 08-99000-smb

4 Case No. 08-01789-smb

5 - - - - - x

6 In the Matter of:

7 SECURITIES INVESTOR PROTECTION CORPORATION,

8 Plaintiff,

9 v.

10 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

11 Defendants.

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13 - - - - - x

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, NY 10004

17
18 July 25, 2018

19 10:10 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: UNKNOWN

1 HEARING re Conference re Motion for an Order Establishing
2 Omnibus Proceeding for the Purpose of Determining the
3 Existence, Duration and Scope of the Ponzi Scheme at BLMIS
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25 Transcribed by: Sonya Ledanski Hyde

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1 where fact discovery is open under existing CMOs. The
2 second group, in the Trustee's view, would be the cases that
3 participated in Madoff's deposition. And then the third
4 group of cases are cases where discovery is closed and they
5 did not participate in Madoff's deposition. And I'll take
6 those (indiscernible).

7 Cases with open fact discovery -- I don't think
8 that there would -- I don't expect there to be disagreement,
9 and I think we've gotten that far with the negotiations
10 where Defendants would agree that those would be part of a
11 consolidated proceeding. There are seven of those cases.

12 With respect to the cases that participated in
13 Madoff's deposition, of the objecting parties there are 92
14 of those cases that participated in Madoff's deposition.
15 And given the deposition, in the Trustee's view, it's
16 reasonable at this juncture to seek to take additional
17 discovery on the Ponzi issue to refute the issues injected
18 into the case by Mr. Madoff's deposition.

19 And, Your Honor, just -- if you would indulge me a
20 bit, just to go through how Madoff's deposition --

21 THE COURT: What discovery does the Trustee need?
22 The Trustee's been preparing these cases for ten years or
23 eight years.

24 MS. BELL: Yes, Your Honor, and that is absolutely
25 correct. And I think as we addressed at the last hearing,

1 he was deposed for three days. And day two he was deposed
2 for two days.

3 THE COURT: Okay.

4 MS. BELL: But, Your Honor, the arguments have
5 advanced beyond the convertible arb and beyond the start
6 date of the Ponzi scheme. So --

7 THE COURT: But that's what I'm -- that's what I'm
8 trying to find out, because all your order says is we've got
9 four months of fact discovery and it's not supposed to be a
10 complete do-over.

11 MS. BELL: Right, and I agree with that, Your
12 Honor. So, what the Trustee was attempting to do in this
13 order was, in our meet and confer, the Defendants raised the
14 issue of the 27 subpoenas that Ms. Chaitman served. If you
15 recall in the original order, the Trustee had a limited
16 number of discovery. We tried to do it based on numbers so
17 the Court would see from the Trustee's perspective we're not
18 trying to have this go for many, many months and to be an
19 open-ended process.

20 In this order we did not do that simply to
21 accommodate the request to have those 27 trader subpoenas.
22 And I think that's worth talking about as well, because not
23 only do we have Madoff's deposition that the Defendants have
24 requested but there are 27 trader subpoenas of former BLMIS
25 employees who worked on the House 5 side. I think there was

1 THE COURT: Let me hear from some of the other
2 parties.

3 MS. CHAITMAN: I just want to say one thing,
4 Judge. If I came in and I said, "You know, Judge,
5 discovery's over in my cases but I now think that I really
6 should be able to take certain discovery..." I wouldn't get
7 two feet in this court. And that's what the Trustee's
8 trying to do.

9 Again, if you look at every one of my answers,
10 you'll see I disputed that there was a Ponzi scheme. This
11 has been in the case since I filed the answers. Thank you.

12 THE COURT: Ms. Neville?

13 MS. NEVILLE: Good morning. Carole Neville from
14 Dentons. Your Honor, I have 14 clients on this -- in this
15 matter now, and the case management order, and all but one
16 of them said that discovery closed. And I'm finding it kind
17 of staggering that Ms. Davis now says that after ten years
18 and a billion dollars, the Trustee has not taken discovery
19 on the Ponzi issue.

20 We have expert reports in all of our cases. What
21 was happening then? What were they doing? Right now, what
22 I hear, if I'm --

23 THE COURT: What was the date of the Dubinsky
24 Report? Because that was -- 2013?

25 MR. KRATENSTEIN: It was 2013.

1 THE COURT: 2013. So, certainly the issue was up
2 there then.

3 MS. NEVILLE: So, I'm hearing now that of 153 --
4 because it's not 106 cases or 105; it's 153 -- there are
5 seven cases where discovery is open and they want to have a
6 consolidated order that cuts off discovery from everybody
7 else? They were obliged to make a motion to show why they
8 were entitled to discovery.

9 What that order from, I think it was September
10 2017, says is that discovery is closed except for the right
11 for the right for the Picower parties, of all people, the
12 Defendants, and the Trustee and SIPC to take discovery on
13 the Madoff. And the Court reserved the issues from the June
14 29th transcript, which I have with me and I read carefully
15 yesterday. There were two issues that were reserved, and
16 they both were the issues Ms. Chaitman raised. There was
17 the production of trading records and the deposition of
18 traders.

19 So, the discovery obligation is from the Trustee
20 to us. Why they now want to open up 12 depositions of
21 Madoff employees to prove the case -- because I think they
22 realize they haven't proved it after all of these years and
23 after all of this money.

24 Rule 16 sets out a standard and I don't think
25 they've met it. They've been not diligent in pursuing their

1 evaluate.

2 THE COURT: All right. Look, I'm not going to
3 grant this motion on the state of this record. The order on
4 which this is all predicated -- there are actually two of
5 them, but the first Madoff deposition order said -- in
6 Paragraph 11 -- it says, "As to the participating customers
7 whose fact discovery is set to close on or after the date,
8 the Court extends fact discovery for the limited and sole
9 purpose of taking Madoff's deposition."

10 It then says, "Other than for that purpose, the
11 deadlines in the applicable case management orders remain
12 unchanged, notwithstanding the dates set forth in the case
13 management orders. Counsel for the Trustee, the
14 participating customers, the Picower parties, and SIPC have
15 the right to move the Court for further discovery based upon
16 Madoff's testimony."

17 If you're going to make that motion, you have to
18 show specifically what it is Madoff said that's new, that
19 you couldn't have anticipated with due diligence of taking
20 that discovery. I'm being told -- and part of the problem
21 of this process is people tell me a lot of stuff, and it's
22 not contained in a pleading. But I'm told that some of
23 these issues were always issues in the case and at some
24 point, somebody got the idea they wanted to take Madoff's
25 deposition. I don't even know how that -- I don't recall

1 discovery is after the close of fact discovery typically.

2 THE COURT: And you oppose her taking those
3 depositions if, for no other reason, you want a consolidated
4 proceeding in which everybody attends those depositions?

5 MS. BELL: Well, we thought it would make sense,
6 Your Honor. For example, she had David Kugel on the list of
7 27 traders. He has a plea allocution and he testified at
8 the criminal trial. There are a number of issues that will
9 go across cases. And so we think it's not efficient to
10 proceed with those --

11 THE COURT: Why don't you make your motion to
12 modify the pretrial orders to reopen discovery?

13 MS. BELL: Yes, Your Honor.

14 THE COURT: And do that expeditiously. Now, with
15 respect -- there's got to be a time limit, though, Ms.
16 Chaitman, with you doing something about this issue.

17 MS. CHAITMAN: I will make the motion -- Judge, if
18 Baker had not indicated to me that they would produce all
19 the trading records without my going back to Judge Moss, I
20 would have done it already. But I will go back to Judge
21 Moss, but I'd like to be able to proceed with the subpoenaed
22 depositions. The traders have both documents and testimony.

23 THE COURT: I think I want to decide the Trustee's
24 motion first, because everybody's going to want to come to
25 Kugel's deposition, for example, if I reopen discovery. And

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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